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In The

Supreme Court of the United States

DEADRIA FARMER-PAELLMANN on behalf of herself and other similarly situated persons of African-American slave descent and the class she represents,

Petitioners,

v.

BROWN & WILLIAMSON TOBACCO CORPORATION, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF *AMICUS CURIAE* OF CAUCASIANS UNITED FOR REPARATIONS AND EMANCIPATION IN SUPPORT OF PETITIONER

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BRIEF OF CAUCASIANS UNITED FOR REPARATIONS AND EMANCIPATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

This *amicus curiae*[1] brief is submitted on behalf of the Caucasians United for Reparations and Emancipation.

I. INTEREST OF *AMICUS CURIAE*

CURE and its members have an interest in this case because the onus of slavery has been, and continues to be, upon the white citizens who have benefited from slavery and its lingering effects. For as long as we white citizens, as a class, continue to receive benefits from slavery and receive the advantage and privilege attributed to us by Jim Crow segregation and the racial discrimination and racial prejudice which endure to this day, we will be denied equality with the slave descendants.

Caucasians United for Reparations and Emancipation defines itself in its Statement of Beliefs, as "an organization of white Americans, (who) express our deep remorse for the ongoing wrongs committed by our people against Black men, women and children in the United States and throughout the Diaspora who are descendants of enslaved Africans." CURE is a non-profit membership organization organized under Section 501(c)(3) of the Internal Revenue Code representing over 120 members from twenty plus

[1] Counsel for both the Petitioner and Respondents have consented to the filing of this brief on behalf of CURE. The correspondence regarding CURE's requests for consent have been filed in the office of the Clerk. Counsel for neither party took any part in drafting this brief in whole or in part. No person or entity, other than the *Amicus Curiae*, its members, or its counsel made a monetary contribution to the preparation and submission of this brief.

states across the United States, as well as supporters in Canada and the United Kingdom. Of its four publicly named officers, two have family histories rooted in Tennessee and Virginia and a third, although a transplant from South Dakota, has resided for most of her life in Georgia. Although CURE seeks to unite an international constituency in support of its cause, its roots and the roots of its leadership are in those states (Georgia, Tennessee and Virginia) in which the institution of slavery was at one time legally sanctioned in every way.

The CURE "Statement of Beliefs" goes on to say as well: "We state that full and complete reparations must be paid not only for slavery and the atrocities that flowed from slavery, but for the ongoing effects of slavery that exist today." This document mourns those losses that can never be repaired, expresses appreciation for the work of past abolitionists, finds that "the U.S. Government is obligated to provide financial and other support," identifies the wealth of "the white American aristocracy that directly benefited from slavery" as an appropriate source for the capitol resources necessary to meaningful reparations for the crimes against humanity practiced in this country's past and finally "express(es) remorse for all crimes committed in the name of white supremacy and we pray for justice to be done in the United States of America and around the earth."

Since 1992, CURE members have been active in supporting the broad movement for reparative justice. We decry the obstacles to equitable personal and collective relationships with slave descendants due to the fact that justice has been denied slave descendants and we are the beneficiaries of the denial. We decry the economic, social and cultural privileges that slavery and our history since

have given us, thus preventing equity that we so desire. We decry the unwillingness of corporations to lift the onus of slavery from us by disgorging the profits they earned by financing and owning slaves.

The advocacy and research work done by CURE are germane to this case. CURE submits this brief to illustrate the impact of the Seventh Circuit's decision on those who understand the need to repair the damage left by our nation's institutional commitment to slavery and other manifestations of the ideology of white supremacy. Certiorari review is necessary to correct the Seventh Circuit's erroneous finding that an evidentiary hearing was not required on the question of whether the statute of limitations ought to be tolled in this matter.

Given the ramifications of this case on the future of healing and reparative justice for the citizens of the United States, Caucasians United for Reparations and Emancipation is grateful to both Petitioner and Respondents for their consent for the filing of this brief *amicus curiae* in support of Petitioner.

II. SUMMARY OF ARGUMENT

The lower courts have handed the Petitioners a "double standard" of jurisprudence by expecting them to have acted with extreme diligence in pursuing their claims when it took over one and a half century for our judicial system to even recognize their right to bring a civil action against private companies. Furthermore, the lower court's decision presents a wholly inadequate analysis of the applicable statute of limitations by failing to identify which statute applies, when it began to run and whether any tolling of the statute is permitted or required by the

facts of this case. The lower court's conclusion that statutes of limitation cannot be tolled for over one hundred and fifty years is not only without any support, but is also inconsistent with state law. Finally, the decisions of the lower courts violate the state and local sovereignties' right to enact meaningful laws to redress damages stemming from the immoral and illegal act of slavery.

III. ARGUMENT

A. THE COURTS BELOW HAVE HANDED PETITIONERS A "DOUBLE STANDARD" OF JURISPRUDENCE IN DISMISSING THEIR CLAIMS WITH PREJUDICE ON THE DEFENSE OF STATUTE OF LIMITATIONS.

In dismissing the Petitioner's claims for replevin, disgorgement of illegal profits, etc., the courts below have unmercifully applied a traditional procedural defense to a most untraditional case and, in so doing, have employed a "double standard" of jurisprudence. In essence, the courts below have said that because the Plaintiffs from the Consolidated Complaint, as a representative group, have taken so long to initiate thei. claims, they are forever time barred from seeking civil redress from private corporations for wrongs committed over one hundred years ago.

The message declared by the courts below is that the former slaves themselves (and not their decedents) should have asserted their own claims for themselves and that, since they did not, too much time has passed to allow the courts to perform their function of administering justice. The District Court, in fact, stated that this case should have been brought by the emancipated slaves no later than 1865. The Seventh Circuit actually reasoned that, since many of the named Respondents were located in the

North, the emancipated slaves should have sought refuge in the protective venues of the northern courts.

The initial problem with the analysis employed by both the District Court as well as the Seventh Circuit is the classification in which the lower courts place the nature of this case. Comparing this case to those of the past involving claims made by the victims of the holocaust and the treatment of Japanese-Americans during WWII, the courts below have classified this case as yet another attempt to provide redress to a group of victims "long since dead" from a group of wrongdoers "long since dead." The conclusions of the courts below is that the controversy is "too old" and "too remote" in time to allow an effective resolution in a court of law. They defer, instead, to the legislature to create methods of redress which are, in effect, financed by society as a whole rather than any identified wrongdoer.

This case is by no means comparable to the victims of the holocaust or such. The wrongdoers named as defendants in this case are not "long since dead" but are, instead, living, thriving corporations that have survived and flourished over the past one hundred and fifty years in part on profits gained from the labor of slaves as well as the financing, insuring and transportation of slaves. The wrongdoers are very much alive today and have every resource and record of their wrongdoings stored within the very bowels of their corporate body.

The victims are, likewise, very much alive. The evils of the enslavement of African-Americans, unlike any other mistreatment of other groups across American history, did not end with the abolition of slavery. For the past one hundred and fifty years, African-Americans have been fighting their way out of the trenches of racism that was

uniquely institutionalized in America with the advent of slavery. Following President Lincoln's Emancipation Proclamation and the conclusion of the Civil War, African-Americans, particularly in the South, were not restored to equal citizenship rights with whites, much less to the basic economic status that they would have realized had their fathers, mothers, grandfathers and grandmothers been free to receive an education, work for compensation and build their economic futures for themselves and their families just as had their white counterparts. Instead, for over one hundred years following the legal abolition of slavery, African-Americans, because of the wrongs inflicted on the slaves that transcended to their children, grandchildren and great-grandchildren, were still denied the right to an education (*Brown v. Board of Education*, 347 U.S. 483 (1954)), denied the right to vote (*Smith v. Allwright*, 321 U.S. 649 (1944) and *Terry v. Adams*, 345 U.S. 461 (1953), as well as the Voting Rights Act of 1965 (42 U.S.C. § 1973, *et seq.*)), denied the right to rent or purchase property (*Reitman v. Mulkey*, 387 U.S. 369 (1967)) and even denied the right to sit at the front of a city bus.

The lower courts questioned any provable connection between the acts of slavery and the damages sought by the Petitioners in this case. The words of the Seventh Circuit best illustrate the lower court's miscomprehension of the uniqueness of this claim:

> . . . there is a fatal disconnect between the victims and the plaintiffs. When a person is wronged, he can seek redress, and if he wins, his descendants may benefit, but the wrong to the ancestor is not a wrong to the descendants.

This is a horrifying conclusion drawn by the lower court as the wrongs committed to slaves are, by the resulting

racism, still wrongs committed even today on the descendants. Moreover, this "doubt" expressed by the lower courts in this case is completely contrary to the recognitions made even by this honorable Court:

> For this Court recognized long ago that, whatever else they (sections 1, 2 and 3 of the Civil Rights Act of 1866) may have encompassed, the badges and incidents of slavery – its "burdens and disabilities" – included restraints upon "those fundamental rights which are the essence of civil freedom, namely, the same right . . . to inherit, purchase, lease, sell and convey property, as is enjoyed by white citizens." *Civil Rights Cases*, 109 U.S. 3, 22. (fn). Just as the Black Codes, enacted after the Civil War to restrict the free exercise of those rights, were substitutes for the slave system, so the exclusion of Negroes from white communities became a substitute for the Black Codes. And when racial discrimination herds men into ghettos and makes their ability to buy property turn on the color of their skin, then it too is a relic of slavery. *Jones v. Mayer Co.*, 392 U.S. 409 (1968).

The victims of past atrocities such as the holocaust did not have to live under government sanctioned policies such as the "separate but equal" doctrine for decades after WWII. Even this honorable court, nearly fifty years after the abolition of slavery, approved disparate racial treatment and sanctioned the state's police power to prevent racial strife. *Plessy v. Ferguson*, 163 U.S. 537, 552 (1896). And this remained the constitutional law of this country for another fifty years until the 1950s when our society began its movement to accountability for wrongdoings committed over a century before. Nor can it be said that the strife is anywhere concluded. Virtually every state in

this union has in recent years enacted "hate crime" legislation aimed at redressing the very seeds of racism that were planted hundreds of years ago with the advent of slavery. How then can we sanctimoniously suggest that the current victims of slavery should have just "come to the North" to file their lawsuits in the 1850s since venue was proper in the North over many of the named defendants?

It was not until 1968 that this honorable Court recognized that Section 1982 of the Civil Rights Act applied against private acts of racial discrimination. *Jones v. Mayer Co.*, 392 U.S. 409 (1968). Conspiracy among private individuals to discriminate on the basis of race was not recognized as actionable under Section 1985 until 1971. *Griffin v. Breckenridge*, 403 U.S. 88 (1971). While society has, since the *Brown* decision in 1955, begun its slow progress on its quest for equality, these named corporate defendants have ***never*** been held accountable for the wrongs that they have committed against the African-Americans who were enslaved or to the children, grandchildren, great-grandchildren and even great-great-grandchildren of those slaves who continue today to suffer from that slavery.

The "badges and incidents of slavery" may be clearly recognized by the human soul, but it has taken our system of jurisprudence over one and a half centuries to respond to the right of the victims of this horrible institution of slavery to seek legal redress against the private individuals and corporations who only recently have made limited admissions of wrongdoings. While there may be many explanations for the incredibly slow process that our system of jurisprudence has taken, it surely cannot be denied that the most plausible explanation is that the victims themselves have been severely incapacitated in

their ability to bring this action both because of the long standing racism that followed the abolition of slavery as well as the affirmative acts of deception by the named Respondents themselves. To summarily dismiss this case with prejudice on the premise that the original emancipated slaves should have been diligent in the protection of their legal rights is a "double standard" of jurisprudence and justice to which this honorable Court should not ascribe.

B. THE SEVENTH CIRCUIT'S DECISION PRESENTS A WHOLLY INADEQUATE ANALYSIS OF THE APPLICABLE STATUTE OF LIMITATIONS.

Petitioner has presented a compelling set of facts regarding willful and intentional fraud by the Respondents and have asked the Court for nothing more than an evidentiary hearing to establish whether or not any applicable statute of limitations should be tolled. The lower courts have responded by simply stating that the Petitioner's claims are dismissed with prejudice on the basis of "the statute of limitations."

What is glaring about the rulings of the lower courts is that the courts do not identify what statute of limitation is being applied, when it began to run nor to what extent, if any, the statute was tolled. As stated above, the District Court actually stated that the claims had to have been brought by 1865. The Circuit Court makes no mention whatsoever of the specifics of which statute of limitations actually bars the claims.

There is, of course, no federal statute of limitation applicable to this case as even Section 1982 of the Civil

Rights Act has no stated period of limitation. In the absence of a federal period of limitation, it is incumbent upon the federal court to adopt the local law of limitation. *Holmberg v. Armbrecht*, 327 U.S. 392 (1946). The problem is that this case involves claims originating out of several states and the decisions of the lower courts do not identify which statute of limitation is applied, let alone do they address why one state's period of limitation should be selected over another's nor when that period of limitation would begin to run.

Rather than addressing these specific questions, the lower courts chose to jump directly to the issue of tolling of the period of limitation on the basis of fraud alleged by the Petitioners. Again, the lower courts do not identify what state concept of fraud is to be applied. The state law applied, however, is critical to a just resolution of this issue. In Georgia, for example, where a defendant is accused of concealing material facts, no other independent fraudulent act is required to toll the statute and the defendant's continued silence is treated as a continuation of the original act of fraud. *McClendon v. Georgia Kaolin Co.*, 782 F. Supp. 1548 (M.D. Ga. 1992), summary judgment den., 813 F. Supp. 834 (M.D. Ga. 1992), motion den., 822 F. Supp. 1580 (M.D. Ga. 1993), summary judgment den., 837 F. Supp. 1231 (M.D. Ga. 1993), motion granted, 841 F. Supp. 415 (M.D. Ga. 1994) and motion granted, habeas corpus den., 837 F. Supp. 940 (C.D. Ill. 1993). If Georgia law were applied to the only facts of record which evidence concealed facts by, at least, J.P. Morgan Chase, then the statute of limitation as to that Respondent may well have been tolled until the disclosure of 2004. Thus, the question that was before the lower courts and which should have been answered is whether or not material

facts were known by the Respondents, concealed by the Respondents and whether or not the Respondents continued their silence. All of these are pivotal issues in answering the question of whether or not fraud by the Respondents would serve to toll the statute of limitations. None of them are addressed at all by the lower courts.

The essence of the lower courts' rulings, unfortunately, is the general conclusion that, even if facts exist which support some tolling, the statute of limitations cannot be tolled for over a hundred and fifty years. No logic is given by either of the lower courts and absolutely no state citation is offered in support of this conclusion. Under Georgia law, the lower courts would be absolutely incorrect in their conclusion as the appellate courts of Georgia have ruled that the sun *never* sets on fraud when it comes to the tolling of the statute of limitations. *Hill v. Fordham*, 186 Ga. App. 354, 367 S.E.2d 128 (1988). Similar principles are supported by the Courts in *Canton Lutheran Church v. Sovik, Mathre, Sathrum & Quanbeck*, 507 F. Supp. 873 (D.S.D. 1981); *Bomba v. W.L. Belvidere, Inc.*, 579 F.2d 1067 (7th Cir. 1978).

1. Inaction Risks Forever Denying Legal Recourse

The record below and the Petitioner's Brief for Certiorari as well as the website of the Restitution Study Group (www.rsgincorp.com) recount the painstaking political work and research efforts necessary to make available the factual basis for the complaint below. The Petitioner's Brief to this Court makes clear that care was taken by Plaintiffs to bring their action within two years of piecing together the evidentiary chain which fingers Respondents

as culpable for their illegal involvement in the slave industry.

If the statute of limitations cannot be tolled in this case, brought to bar in a timely manner after the revelation of the facts asserted by the original Consolidated Complaint, then they will forever be barred on similar grounds. For this Court to deny this Petition for a Writ of Certiorari at this junction will serve to forever close off a legal recourse for the grievous wrongs which all agree constituted the institution of slavery in this nation.

The District Court below argues that the stain of slavery has been adequately repaired by the sacrifices made during the Civil War and the Congressional action in the wake of that war to amend the U.S. Constitution and to enact Civil Rights laws. An honest assessment of the state of race relations in the United States shows the inadequacy of such measures if they were truly intended for that purpose.

But until the evidence linking the criminal behaviors of the Respondent corporations was revealed in the 2004 disclosures of J.P. Morgan Chase, the post-Civil War Congressional actions alone were not sufficient to permit this case to be made.

2. Statute of Limitations serves no public interest in this matter

Statute of Limitations serve an important public interest by protecting a Defendant from having to defend an ancient action for which all the evidence and the witnesses are gone. A Statute of Limitations protects defendants from being convicted by the lapse of time.

But in this matter, a statute of limitations serves no public interest. There is no factual dispute as to the involvement of the Respondent Corporations in financing slavery and, sometimes, in owning slaves. The complaints below are largely based on the admissions of corporations based on a search by those corporations of their own archives.

Surely they do not now assert that there are circumstances not available now in the historic record which somehow ameliorates their responsibility for their actions or those of their predecessor corporations. Surely they do not assert that the ill-gotten gains, the fruit of their involvement in the immoral slave trade are somehow washed clean of those past actions by the passage of time.

The question is not whether these corporations engaged in the behavior they are accused of. They have already acknowledged that in fact they were. The question before the Courts now is to what extent are the assets now enjoyed by these Respondents the result of their participation in the crimes against humanity which the slave trade represents.

3. Respondents are not disadvantaged

This case does not hinge on whether they participated in the slave trade, as their participation has already been acknowledged by officers for the Respondent corporations in public filings, statements and documents. The Respondents are not disadvantaged by tolling the statute, and the statute therefore serves no public purpose in this matter.

The Respondents are not disadvantaged. They still have access to all they need. They have paid money to

maintain their corporate archives over the years. If the Respondents are not damaged, then the statute of limitations doesn't serve the public interest. They are no worse off in being able to defend themselves than they were one hundred years ago.

C. THE SEVENTH CIRCUIT'S DECISION DENIES STATES' RIGHTS TO PROVIDE REMEDY FOR CONFISCATED WAGES AND ILLEGAL ENRICHMENT.

Elected state Assemblies in their wisdom have enacted statutes in California, Illinois and Iowa to require public disclosure of past corporate involvement with the institution of slavery as a condition of offering insurance products to consumers in those states. In their collective wisdom, the elected governing municipal bodies of Berkeley, Los Angeles, Oakland, Richmond and San Francisco California; Chicago, Illinois; Detroit and Wayne, Michigan; Cleveland, Ohio and Philadelphia, Pennsylvania have enacted ordinances requiring disclosures by corporations of their past involvement in the slave industry for contractors doing business with the City. *Amicus Curiae* here calls to the attention of the Court the research found at www.rsgincorp.com which is too voluminous to include within the page limitations of this brief.

This action arises as a result of very recent voluntary disclosures made by the Respondent Corporations in compliance with state statutes and municipal ordinances requiring these disclosures as a condition of licensing and public contracts. These state laws and local ordinances were enacted to force disclosure that had been withheld by corporations directly involved in the slave industry over one hundred and fifty years ago.

There can be only one conclusion drawn from the enactment of these state and local laws: It is the intent of those sovereignties to bring to justice wrongdoings committed by living, thriving corporations which were involved in the slave industry. If the decisions of the lower courts are upheld, then the obvious result is to deprive these state and local governments any real meaning to their quest. In short, if these decisions stand without review, then the valiant acts of these local governments will be stripped of any meaningful purpose.

In defending the constitutionality of the 1866 Civil Rights Act, Senator Trumbull of Illinois said:

> . . . the trumpet of freedom that we have been blowing throughout the land has given an 'uncertain sound,' and the promised freedom is a delusion. . . . I have no doubt that . . . we may destroy all these discriminations in civil rights against the black man; and if we cannot, our constitutional (thirteenth) amendment amounts to nothing. Cong. Globe, 39th Cong., 1st Sess. 322 (cited in) *Jones v. Mayer Co.* 392 U.S. 409.

The decisions of the lower courts in this case have rendered the enactments of the state and local governments a "trumpet with an uncertain sound" thus depriving those sovereignties of their constitutional right to redress these historic wrongdoings.

Nor should it be concluded that compliance with these voluntary disclosure laws shields Respondents from culpability for their previous wrongdoings. These corporations could have as easily chosen to refrain from seeking business with those state and municipal governments which found it to be sound public policy to require such disclosure. By so doing they could have perpetuated their

fraud, which can only be resolved by the disgorgement of their ill-gotten gains.

IV. CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be GRANTED.

This 20th day of June, 2007.

Respectfully submitted,

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